

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:15-CV-00186-GCM**

INVUE SECURITY PRODUCTS, INC.,)

Plaintiffs,)

v.)

HALO METRICS, INC.,)

Defendants.)

ORDER

THIS MATTER is before the Court on Plaintiff's motion to strike the affidavit attached to Defendant's motion to dismiss. Plaintiff filed suit against Defendant on April 28, 2015, and Defendant moved to dismiss. (Doc. No. 1 & 12) Defendant attached to its motion an affidavit by its Vice President of Sales, Marketing and Operations. (Doc. No. 13) Plaintiff moved to strike the affidavit, arguing that its submission was procedurally improper and that it contained several legal conclusions. (Doc. No. 14) Defendant filed a response offering to withdraw the affidavit. (Doc. No. 22)

It appears to the Court that Plaintiff is correct. The Court cannot consider the affidavit attached to Defendant's Answer without converting its motion to dismiss into a motion for summary judgment. Fed. R. Civ. P. 12(d); Waugh Chapel S., LLC v. United Food & Commercial Workers Union Local 27, 728 F.3d 354, 360-61 (4th Cir. 2013). Thus, the Plaintiff's motion is **GRANTED**.

SO ORDERED.

Signed: October 20, 2015



Graham C. Mullen
United States District Judge

